

**CAO P INSTRUCTION 1-2
PETITION FOR PATERNITY, CUSTODY, VISITATION OR SUPPORT
IN ADA COUNTY**

Talk to an attorney, if possible.

WARNING: When you represent yourself in a court case you are held to the same standard as an attorney. This applies to your preparation of paperwork and your conduct at all hearings and/or trial. Your lack of legal knowledge may cause you to make serious errors in handling your case. These instructions are not a substitute for legal advice. The laws and court rules are complex and following these instructions will not guarantee that your rights are protected or that you will be satisfied with the result. You should always talk to a lawyer about your legal problems before filing any legal paperwork. If you cannot afford to hire an attorney to represent you, you may be able to pay a lawyer to give you advice and review your paperwork for a lesser cost. Contact the Idaho State Bar Lawyer Referral Service (208-334-4500) for the name of an attorney in your area who will provide an initial half-hour consultation for \$35. Contact the Court Assistance Office for information about resources for low-income people, or visit the Idaho Supreme Court's Self-Help Center at <http://www.courtselfhelp.idaho.gov/>.

You will be signing a sworn statement that you have read the Petition, know what it says, and believe it's true. To guarantee the truthfulness of that statement, be sure to read the entire completed form.

Instructions.

Fill in the forms by typing or by printing neatly and legibly in **black ink**. Always keep a copy of the completed form for your records.

At the top left-hand corner of page 1, fill in your full legal name, mailing address and telephone number.

The Court Heading. Fill in the county and judicial district in capital letters (for example, "IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT, IN AND FOR THE COUNTY OF ADA").

The Caption. Fill in your full legal name on the line above Petitioner and the other parent's full legal name on the line above Respondent.

The Case No. The case number will be assigned by court personnel when you file the Petition. You should write in the case number on all other documents.

The **Court Heading**, **Caption** and **Case Number** will be the same on all other documents you prepare for this case.

The Name of the Document. Check the boxes to indicate the orders you want.

1. Minor Child/ren of the Parties.

- Fill in the name and date of birth for each minor child and the city and state where each child has lived for the last five years. **Warning:** If any of your children have not resided in Idaho for at least six uninterrupted months before the filing of the Petition (or for their entire lives if they are less than six months of age), the Idaho court may lack authority ("jurisdiction") to determine custody of that child. In that event you should consult an attorney to determine if there may be other grounds for jurisdiction and venue under Idaho's laws.
- Check the first box if paternity has NOT been established. **or**

- Check the second box if an Order of Filiation (a court order stating the name of the father) has been signed by a judge in some other court case (this may be a Child Support Order filed by the Department of Health & Welfare).
 - Fill in the state, county and case number of that order and fill in the name of the father.
 - Make a copy of that order, mark the copy as **Exhibit C** at the bottom of the first page of the order and staple it to your Petition. **or**
- Check the third box if both parents have signed a verified Voluntary Acknowledgement of Paternity for the child/ren. A Voluntary Acknowledgement of Paternity cannot be rescinded after the Petition is filed.
 - Make a copy of the Voluntary Acknowledgement for each child.
 - Mark the copy as **Exhibit C** at the bottom of the first page of the Acknowledgment and staple it to your Petition.

2. The Parties.

Fill in the city, county, and state where each parent lives and check the box to indicate if you, the Petitioner, are the mother or father and if the Respondent is the mother or father.

3. Jurisdiction to Establish Paternity.

If you did not check either the second or third box in paragraph 1, you need to obtain a court order to establish the paternity (father) of your child/ren.

- Check the box(es) that apply to your situation. **Warning:** If none of the statements apply to your situation, the Idaho court may lack authority (“jurisdiction”) to determine paternity of the child/ren. In that event you should talk to an attorney to determine if there may be other grounds for jurisdiction and venue under Idaho’s laws. The court cannot order custody or support for the child/ren until paternity has been established.

4. Venue.

This is your statement that this county is the correct place to file the Petition.

5. Jurisdiction.

This is your statement that each child has resided in Idaho for at least the past 6 uninterrupted months. Additionally, you are required to inform the court if there have been any other cases involving your child/ren in any court or if there are any other people claiming custody or visitation rights with the child/ren.

In **paragraphs 5a, b, c and d**, select the appropriate check box and provide all requested information.

6. Paternity.

If you want the court to enter a paternity order, check the box and fill in the father’s name.

7. Legal Custody.

“Joint legal custody” means each parent has decision-making rights, responsibilities and authority relating to the health, education and general welfare of the child/ren. The court will order joint legal custody unless you can prove it would not be in the best interest of the minor child/ren for the other parent to have decision-making rights.

- Check the first box if both parents are fit persons to have decision-making rights, responsibilities and authority relating to the health, education and general welfare of the child/ren. **or**

- Check the second box if you are declaring that one parent should have sole legal custody of the child/ren, **and**
 - Write in the name of the parent who should be given sole legal custody and
 - State why the other parent should NOT be allowed to share legal custody.

8. Physical Custody.

“Joint physical custody” means each parent has significant periods of time in which a child resides with or is under his/her care and supervision. Joint physical custody assures the child/ren frequent and continuing contact with both parents but does not necessarily mean the child spends exactly the same amount of time with each parent. The court will award joint physical custody unless you can prove it would not be in the best interest of the minor child/ren.

- Check the first box if both parents should be given physical custody of the child/ren **and**
 - Check the second box if you are using a Parenting Plan to describe the plan you want the court to order. Complete the **Parenting Plan**. If needed, write **Exhibit A** on the bottom of the first page of the Parenting Plan and attach (staple) it to the Petition.
IMPORTANT: The Parenting Plan must be attached to make it a part of the Petition. Make an extra copy of the Parenting Plan to attach (staple) to the final Decree.
 - or**
 - Check the third box if you are not attaching a Parenting Plan and describe the physical custody plan you want the court to order.
- or**
- Check the fourth box if you are asking the court to give sole physical custody of the child/ren to only one parent, **and**
 - Write in the name of the parent should be given sole physical custody **and**
 - State why the other parent should NOT be given periods of time when the child/ren resides with or is under his/her care and supervision.
 - Check the fifth box if you want the court’s order to give the other parent restricted or conditional time with the child/ren and write in the parent’s name **and**
 - State specifically what you want the court to order.

9. Child Support.

If there is already an order signed by a judge, for example in a different case filed by the Department of Health & Welfare, that sets child support, check the first box, **and**

- If you want that order to continue and control child support instead of getting a new order, check the second box. Then make a copy of that Order, Judgment, or Decree, mark it as **Exhibit B** and attach (staple) it to the Petition. Then proceed directly to Section 10 of the Petition. **Or**
- Check the third box if you believe there are substantial and material reasons why the child support set in the other case should be changed by an order issued in this case which would control future child support payments.

Warning: You should be aware that jurisdiction as to child support is a complicated issue and having a child support order in a separate case can create problems for enforcement and future modifications of the order. Also, your judge may require you to join the Department of Health and Welfare as a party in this case, or consolidate the two cases, before a new child support order can be issued in this case.

or

If there is NOT a child support order, check the fourth box.

Note: You will first need to complete an Affidavit Verifying Income and a Child Support Worksheet. In Ada County, Family Court Services may be able to help you generate these documents if you provide the required information. The Child Support Worksheet will be used to complete this section. If you want the court to enter a support amount that is different from the Idaho Child support Guidelines amount, you must come to court for a court hearing and persuade a judge why that is in the best interests of your children and meets their financial needs.

- Write in the name of the parent who will pay child support and from the child support worksheet, insert the basic monthly child support before any adjustments and the day of the month you want the payments to be made.
- In paragraph 9a, if you have more than one minor child, check the box. You will need to have a separate calculation to reflect the changed amount of support as each child is no longer eligible for support under Idaho law. These calculations are provided if you have used a computer program to calculate child support. In Ada County, Family Court Services may help you with these calculations if you do not have them.

Warning: If you are the parent paying child support (the “obligor”) you should be aware the Order or Decree will provide for collection of child support from your wages and from your real estate or personal property. It will also provide that if you move to another state, the child support can be enforced directly by courts in other states. Additionally, you should be aware that, according to Idaho law, if unpaid child support equals or exceeds the total support owing for ninety (90) days or the sum of \$2,000, whichever is less, you are subject to suspension of any license to practice or engage in any business, occupation or profession, operate a motor vehicle, carry a concealed weapon, or engage in any recreational activity, including hunting or fishing. Further, the State Tax Commission will withhold and set-off any state tax refund to collect any unpaid child support, or unpaid spousal support, and the Idaho State Lottery will likewise withhold and set-off a prize of a lottery prize-winner.

Extended Visits

In paragraph 9b, check the first box if the child/ren will be living in the home of one parent at least 75% of the time under your proposed Parenting Plan. If you do not check this box, go directly to paragraph 9c. Otherwise,

- Check the second box in paragraph 9b if you want the court to order a reduction in child support when the parent paying child support has physical custody of the child/ren for 14 or more overnights in a row. Next, check the appropriate box to indicate if the reduction should be 50% or some other percentage.
- Check the next box if you have more than one child, but the parent paying child support will have some, but not all of the children for a period of 14 overnights in a row. If this box is selected, the reduction of support will be applied only to the child/ren who are actually with the parent paying child support during those 14 overnights in a row.

Note: If the child/ren reside with each parent more than 25% of the time (overnights), this is considered shared physical custody and certain adjustments are made in the calculation of child support. Section J(5) of the Idaho Child Support Guidelines, Rule 126 of the Idaho Rules of Family Law Procedure, describes “Shared Physical Custody” and computation of child support with that parenting arrangement. The reduction of child support for extended visits is not permitted if child support has been calculated with a shared physical custody adjustment. You can get a copy of the Child Support Guidelines online at <http://www.isc.idaho.gov/irflp126>.

Work-Related Child Care Costs

Work related child care costs are separate from the basic monthly child support amount. Check the box in paragraph 9c you want the court to order the parent paying child support to also contribute to the payment of work related child care costs.

- Fill in the percentages each parent will pay.
- Note: Under this section you are asking the court to require each parent to pay their share directly to the care provider if permitted by the provider, otherwise, the parent who pays the costs must be reimbursed within ten days after the other parent receives a copy of the bill and proof of payment.

Medical Insurance

The cost of medical, dental and/or optical insurance for the child/ren is separate from the basic monthly child support amount. The cost is prorated between the parents in proportion to their Guidelines income. Check the first, second or third box to indicate how health insurance coverage for the child/ren is now being provided. If you select the first paragraph, write in the name of the parent(s) currently providing health insurance.

Warning: The Order or Decree will provide: Failure to provide medical insurance coverage may result in the direct enforcement of a medical support order by either the obligee (party or parent other than the parent ordered to carry or provide a health benefit plan for the parties' minor child/ren) or the Department of Health and Welfare. A national medical support notice will be sent to your employer, requiring your employer to enroll the child in a health benefit plan as provided by Sections 32-1214A through 32-1214J, Idaho Code, and applicable rules of the department.

Health Care Costs Not Paid by Insurance

The actual cost incurred for health care expenses for the child/ren not paid in full by insurance is separate from the basic monthly child support amount and is also prorated between the parents in proportion to their Guidelines income. Insert the correct percentages for the division of these costs. (Refer to the child support worksheets for these percentages.)

Next, check the appropriate box indicating how insurance and health care costs should be paid.

Income Tax Exemption

Both parents are entitled to share in the benefits of income tax credits and exemptions for the child/ren regardless of which parent actually claims those benefits in a tax return.

- Check the first box in paragraph 9f to divide the value of tax benefits and exemptions for the child/ren according to the Child Support Guidelines. Insert the name of the parent who will claim each child as a dependent on their income tax return(s). (If you do not agree otherwise, the parent with the most income will claim the children.) Note: The child support calculation must reflect the same designation.
- Check the second box if both parents want to agree to a different division of these benefits. Note: If you select this option you will be required to provide the judge a written document signed by both parties showing your agreement. Do not select this option unless you have, or are sure you can obtain that written document. If you select the first check box option, you may always agree later to a different division by filing a written stipulation with the court.

Summary of Basic Child Support and Adjustments

Paragraph 9g is a summary of all of the choices on child support you have selected in the prior sections. Refer to all of the sections of paragraph 9 and your Affidavit Verifying Income and Child Support Worksheets, then insert the correct percentages and amounts in the summary. The options, amounts and percentages you insert in the summary, must be exactly the same as those you selected or inserted in the prior sections. Attach (staple) a copy of your Affidavit Verifying Income and Child Support Worksheets to the Petition, marking each as **Exhibit B**.

10. Name Change.

If you want to change the legal last name of the child/ren, mark the box and write in the last name as it should be. (Accurate spelling is very important.)

11. Amend Birth Certificate.

If your child/ren's birth certificate(s) do/does not include the name of the father, the Bureau of Vital Statistics in the state where your child/ren was/were born will add the father's name to the birth certificate(s).

Date and Signature: Leave the spaces for the State and County blank. Go to an office where there's a Notary. Have the notary fill in the spaces. Sign the Petition in front of the Notary and have your signature notarized.

Exhibits (attachments):

- Complete the Parenting Plan. If needed, mark it as **Exhibit A**.
- **Exhibit B** will be either a copy of the Child Support Order, Judgment, or Decree already in effect **or** the Affidavit Verifying Income and Child Support Worksheet(s).
- If paternity has already been established, **Exhibit C** will be either a copy of the Order of Filiation entered in another court case (if this is the same order as the Child Support Order – **Exhibit B** – just mark it as **Exhibit B** and **C**, you don't need to attach two copies) **or** a copy of the Voluntary Acknowledgement(s) of Paternity.

The Decree you will be preparing will have the same Parenting Plan. **Make an extra copy** of the Parenting Plan so you will have it to attach to the Decree.

The exhibits must be stapled to the Petition (and all copies you are required to make).

Make two more copies of the Petition with Exhibits attached, one copy for each party. (Continue to read the general Instructions on Filing for Custody to file and serve your Petition.)